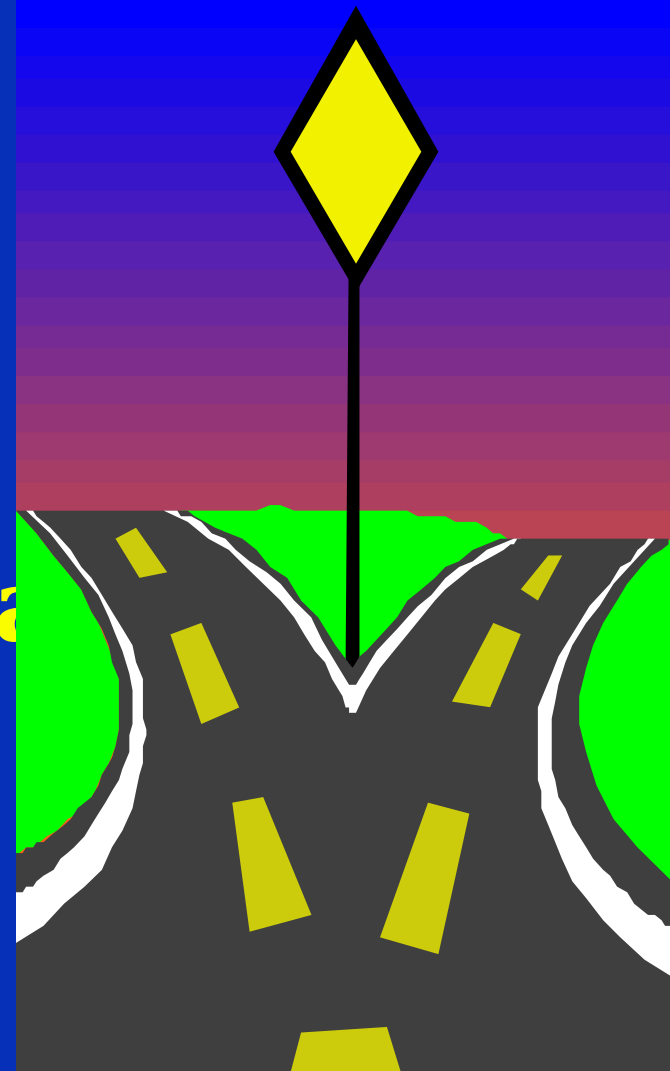


Fiscal Law Update

Roadmap

- 1 Purpose
- 2 Construction
- 3 Intergovernmental
Acquisitions
- 4 Miscellaneous



3 Part Purpose Test

- Language of Act, or
“Necessary Expense”
- Not Prohibited by Law
- Not Otherwise
Provided For

page 2-2

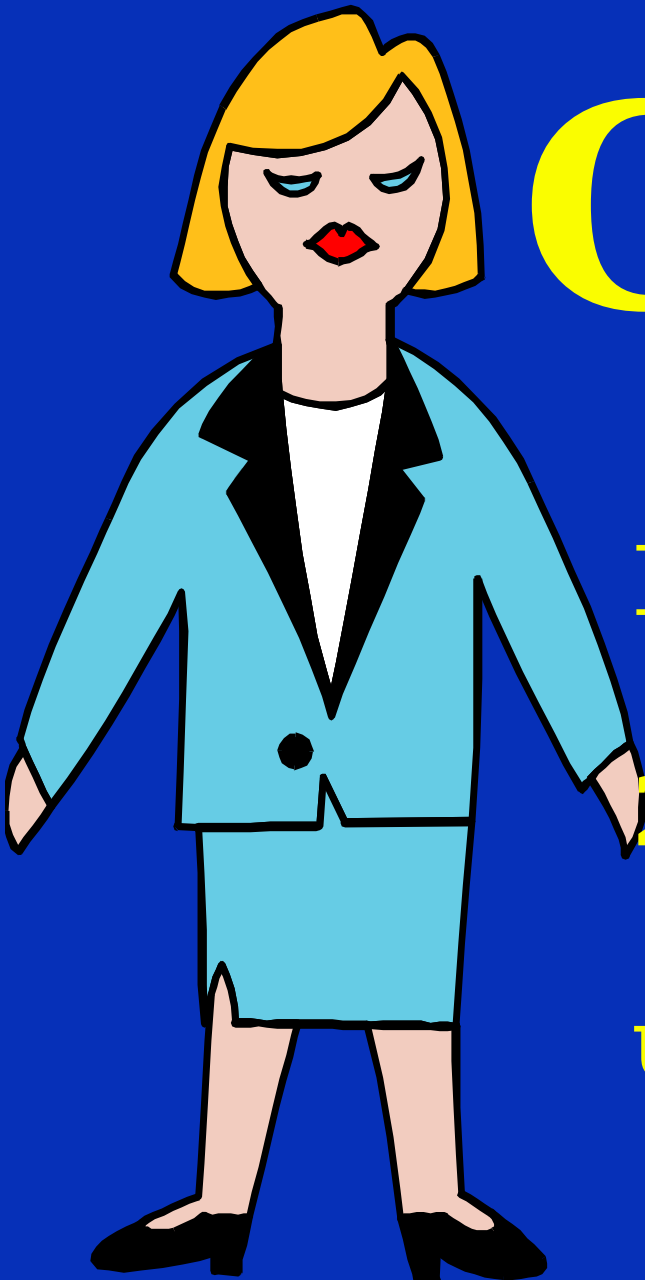
- First Prong - “Necessary Expense”

An expenditure is permissible if it is reasonably necessary in carrying out an authorized function, or will contribute materially to the effective accomplishment of that function.

Typical Questionable Expenses



page 2-19



Clothing

- Purchase of
Insulated
Overalls, B-
288828

- Replacement
uniforms

page 2-19



Food



- **Payment of Non-negotiable, Non-Separable Facility Rental Fee, B-281063 (1999)**
- **Only if facility requires you to take the food to get the facility**

page 2-20

Light Refreshments

- JTR/JFT changes
- Not a meal
- Majority of agencies
- different DS to
- training agencies



page 2-20

Light Refreshments

- **Use of Appropriated Funds to Purchase Light Refreshments at Conferences, B-288266 (2003)**

- **Based upon travel statute**

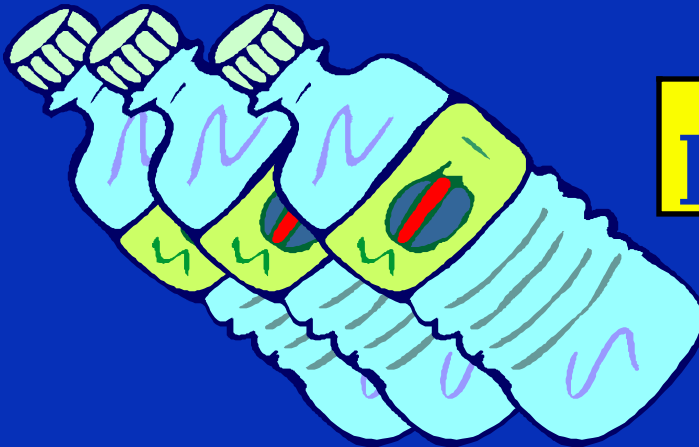
- **GSA exceeded sta**

authority

- **How do you handle**

Bottled Water

- Water supply must be:
 - unavailable or
 - unpotable
- AR 30-22 - DA Approval



page 2-23



Food Storage and Preparation Equipment

- Central Intelligence Agency, B-276601 (1997)
- Efficient performance of agency activities
- >15 minute commu



Business Cards

- Letter to Jerome Markiewicz, B-280759 (1998)
- GAO vs Agency



UNITED STATES ARMY
THE JUDGE ADVOCATE GENERAL'S SCHOOL

(Why?)

MAJ Gregg S. Sharp

Professor, Contract and Fiscal Law Department

The Judge Advocate General's School, Army
ATTN: JAGS-ADK
600 Massie Road
Charlottesville, VA 22903

Office (434) 971-3360
FAX (434) 971-6271

E-mail gregg.sharp@HQDA.ARMY.MIL

page 2-27



Telephones

- **31 U.S.C. § 1348**
- **Telecommuting / teleworking**
 - **1996 Authorized**
 - **OPM Recent Regulation**
 - **www.telework.gov page 2-28**



Telephones

- **Cell Phones**
 - **Reimbursement: B-287524 (2001) vs. B-291076 (2003)**
 - **Flat Rate**
 - **Agency (not Local) Must Promulgate**
 - **Purchase: AR 25-1**



licenses & Certificates

- § 1112 of the 2002 NDAA (Pub. L. No. 107-107) adds 5 U.S.C. §5757:

agencies may pay for expenses for employees to obtain:

- professional accreditation,
- state-imposed professional licenses,

- professional certification
and

- examinations to obtain such credentials.

REQUIRES IMPLEMENTATION

Awards/Unit Coins

- **\$2.7 million - (Army)**
FY 2000 (Oct - Mar)
- **Department policy**
- **Major commands**
policy memoranda



pages 2-31

Coins: New HQDA Policy

- 1. Applies to HQDA & FOAs, only.**
- 2. Only BG or SES level HQDA principals may purchase coins with approp. funds. (May be delegated to one GS-15 / 0-6 or above).**
- 3. Does not impact on coins bought with personal funds, NAF, ORFs or private organization funds.**
- 4. Coins bought by approp funds can be given out only on behalf of the principal.**

DA Memo 600-70

Coins: New HQDA Policy

- 1. Coins will not contain individual names (only organizational names). (Names can be engraved on an individual basis.)**
- 2. Bases for Distributing coins:**
 - (1) Coins may be presented to DOD personnel:**
 - a)* To recognize excellence in an Army competition or similar activity (AR 600- 8-22 and AR 672-20);**

Coins: New HQDA Policy

(b) To recognize a unique accomplishment that furthers the efficiency & effectiveness of the Army's mission (AR 600-8-22 & AR 672-20).

(2) Coins purchased with appropriated funds shall not be presented to contractor personnel.

The BG/SES level Commander will set forth a "standard protocol" discussing who can issue coins on his behalf.

Accurate record keeping is required.

Use of Office Equipment

- B-277678 (1999)
- Agency May Permit Non-Interfering, Incidental Use
- OPM Website & ROA article

page 2-34



FY03 Appropriations Act

§ 8116 (116 Stat. 1564)

Chaplain Programs

- **FY03 O&M** funds may be used to support chaplain programs for building / maintaining a strong family
- Transportation, food, lodging, supplies, fees, and training materials are specifically covered
- Service member and family members

Not in outline

FY04 Authorization Act

§ 582 added 10 U.S.C. § 1789

Chaplain Programs

- Permanent authorization for chaplain-led programs (retreats, conferences)**
- Maintain strong families**
- Includes reservist on active duty and their family members**

Not in outline



Security Guard Services

- 10 USC § 2465 Prohibits
- **USA Patriot Act** - Security Service Ks with State & Local Governments
- **§ 332 of FY03 Auth Act**: Can contract for security guard services in excess of 10 Sep 2001 levels, if . . .

Not in outline

3 Part Purpose Test

- Language of Act, or
“Necessary Expense”
- Not Prohibited by Law
- Not Otherwise
Provided For

Look to see...

1. If two or more appropriations are available, then you must use the more specific appropriation.
2. If neither is more specific, then agency can choose either, but is thereafter bound by **page 2-35** ~~that~~ choice.

Investment/Expense Threshold

- **Expenses**
consumed in
operating & maintaining
- **Investments**
acquisition costs of
capital assets





- Non-durable items regardless of amount
- Durable items < \$250K



- Durable items > \$250K

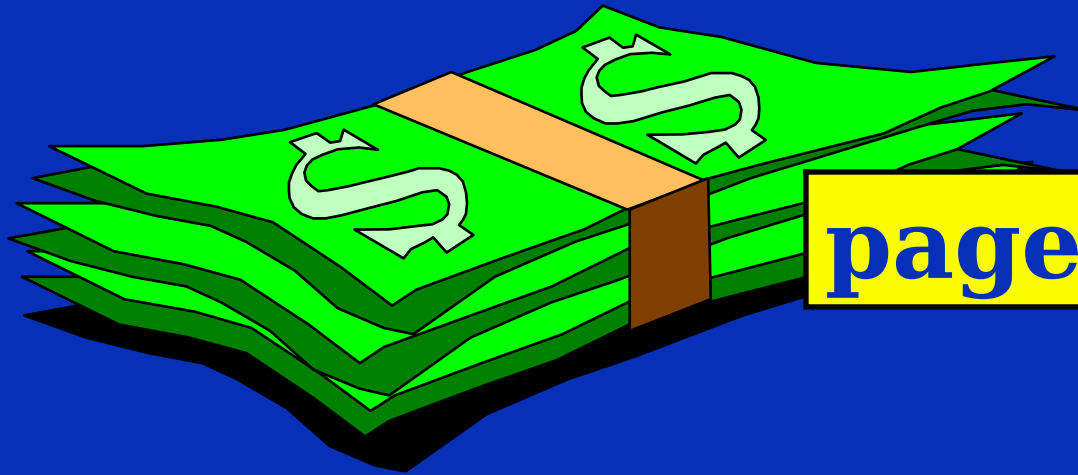
pages 36-37

Investment/Expense Threshold - \$250,000

During the current fiscal year, appropriations which are available to the [DoD] for operation and maintenance may be used to purchase items having an investment unit cost of not more than ~~\$100,000~~.

page 2-37 \$250,000

EMERGENCY & EXTRAORDINARY EXPENSE FUNDS



page 2-45

Emergency & Extraordinary Expense Funds

- **Representational Funds**
(.0012)
- **Miscellaneous Expenses**
(.0014)
- **Crim. Investigation Funds**
(.0015)
- **Intelligence Cont. Funds**
(.0017)

page 2-47

Emergency & Extraordinary Expense Funds

- **DOD Directive 7250.13**
 - Updated 10 Sep 02
- **AFI 65-603**
 - Updated 30 Jan 02
- **AR 37-47 & SECNAV
7042.7**
 - (mid-90s)

page 2-47

Official Courtesies



- Visits by distinguished guests
- Gifts/mementos to authorized guests
 - Non-DOD Guests (\$285) (2002)
 - Recent Change: DOD **page 2-48** (\$40)

23 Dec 02 OSD Memo

**December 2003
Army Lawyer Article
by LTC Lescault**

Not in outline

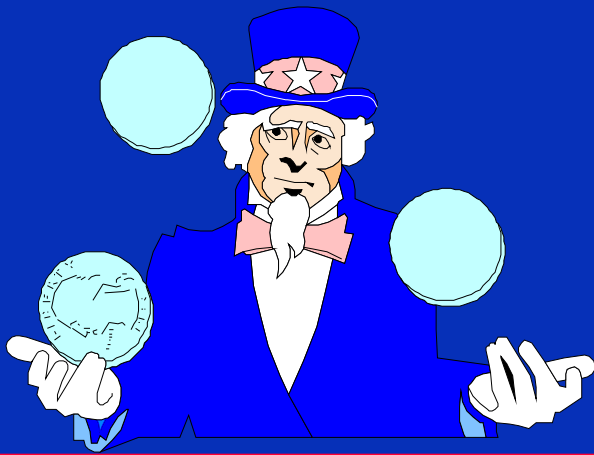
CONSTRUCTION FUNDING

Chapter 5



Camp Bondsteel, Kosovo
March 2000

Task Force Falcon Public Affairs Office
122nd Mobile Public Affairs Detachment



Military Construction: Selecting the Proper

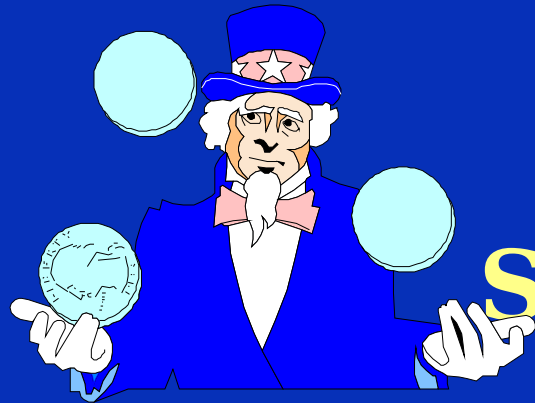
Appropriation Pot

The “Project” Cost Determines the Funding Source:

- $> \$1.5 \text{ M}$ = Specified MILCON Funds
- $\$750,000 - \1.5 M^* = Unspecified Minor Military Construction Funds
- $\leq \$750,000$ = O&M Funds*

***O&M up to \$1.5 M if for life, health safety**

***Up to \$3 Million for Life, health, safety**



Military Construction: Selecting the Proper Appropriation Pot.

> \$ 1.5 Mil	Mil Con Funds	In Cong. Approp.
\$750K– \$1.5 Mil*	Unspec Minor Milit Const (UMMC)	Sect. Level
Under \$750K*	O & M	Commander

Problem Areas

- **Project Splitting**
- **Maintenance & Repair**
- **(Lack of) Definition of “life, health, or safety” threatening**

Various Places

Combat & Contingency Construction

- 22 Feb 00 Memo, DA
OGC:

If the construction is intended to meet a temporary operational requirement to facilitate combat operations

page 5-11

Then use O&M

Combat & Contingency Construction

- **20 Sep 02, AFI 32-1032**

**Use O&M Funds Only in
Areas Where Actual
Operations Are Being
Conducted**

Not in outline

Combat & Contingency Construction

- **27 Feb 03 DOD Memo,**

Use O&M:

- **Necessary to support urgent military requirement of a temporary nature**
- **Construction not on a “military installation”**
- **No intent to use after mission over**

Combat & Contingency Construction

- **2003 Emergency Supplemental**
 - SECDEF may “transfer” up to \$150M for Contingency Construction:
 - **Must Use Contingency Construction Authority, 10 U.S.C. 2804 (21 Day Wait)**
 - **Duration of Use Irrelevant**
 - **Do Not Use 27 Feb 03 DOD Policy**

Combat & Contingency Construction

2004 Emergency Supplemental

- **Temporary Authority (FY04)**
- **\$150M**
- **Report to Congress NLT 15
days after obligation**
- **Necessary Findings**

page 5-12

Combat & Contingency Construction

- The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of Operation Iraqi Freedom or the Global War on Terrorism
- The construction is not carried out at a military installation where the United States is reasonably expected to have a long-term presence

Combat & Contingency Construction

- **United States has no intention of using the construction after the operational requirements have been satisfied; and**
- **The level of construction is the minimum necessary to meet the temporary operational requirements**

**What About When the Money on
Expired?**

page 5-13

AR 420-18, Facilities
Engineering, Materials,
Equipment, and
Relocatable Building

Management
• Relocatable/Temporary
Facilities = Personal
Property

- Lease > \$50,000
- Purchase

page 5-2

THE ANTIDEFICIENCY ACT

Chapter 6



Reporting/Investigating:

Changes to DOD FMR, Ch.14:

- o **April 2003 (19 Nov 03)**

- Service-specific guidance placed into FMR

- o **November 2003**

- preliminary summary report of violation to USD (Comptroller) and DFAS before discipline

page 6-15

Intergovernmental Acquisitions & Revolving Funds

Chapters 7 / 8

Economy Act

- 31 USC § 1535(b): requires ordering agency to reimburse the servicing agency for the actual or estimated costs of the order.
- Volume 11A of the FMR
- Direct vs. Indirect Costs
- DoD ⇒ DoD: No Indirect Costs
- Filling orders is not supposed to be a money-making venture!!!
- Watch Out For Fees!

page 7-2

Project Orders

(41 U.S.C. § 23)

**“All orders...for work or material
or for the manufacture of
material...placed with
Government-owned
establishments shall be
considered as obligations in the
same manner as provided for
similar orders or contracts
placed with commercial
manufacture**

page 7-12

Clinger Cohen Act

(40 U.S.C. § 14129e)

- 1996
- Government-wide IT
- Congress – OMB – GSA
 - **FEDCAC**
 - **FEDSIM**

page 8-13

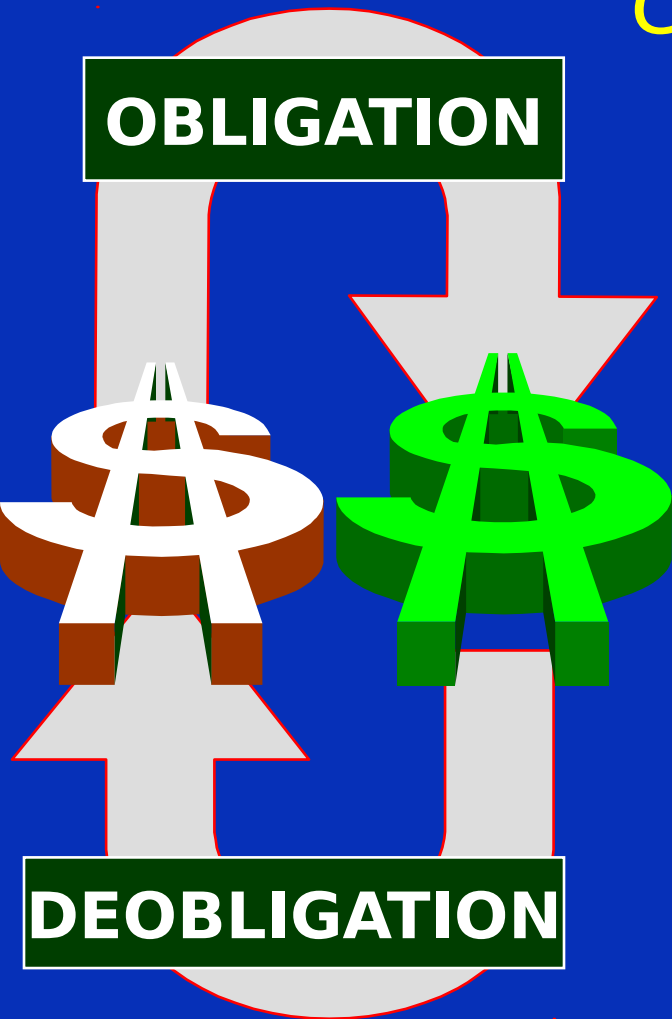
Franchise Funds

(31 U.S.C. § 501 note)

- **1994 / 1996**
- **Government-wide
(capital equipment, ADPE,
financial management
systems)**
- **Congress - OMB -**
 - **DVA, EPA, FAA,
Treasury**

page 8-15

Economy ACT: 31 U.S.C. §
1535(d); DoD FMR, Volume 11A,
Ch 3, ¶ 030404



- Obligate upon receipt of order acceptance
- Deobligate if the servicing agency has not incurred obligation before end of period availability

page 7-4

Project Orders

(41 U.S.C. § 23)

- No de-obligation required
(DoD FMR, Vol 11A, Ch 2, ¶ 020102)
- Bona fide need / “90-Day Rule”
(DoD FMR, Vol 11A, Ch 2, ¶ 020510)

page 7-12

Do We Need to Deobligate?

**National Park Service Soil
Surveys, B-282601 (1999)**

- **NPS & USDA**

“Where an interagency agreement is based on specific statutory authority independent of the Economy Act, the funds do not expire at the end of the period of availability if they have been otherwise properly obligated.”

Not in outline

IGA/Revolving Funds

Time Issues

- **Order must be specific and definite**
- **Work must constitute a bona fide need of the year for which your funds are available for obligation**

page 7-7

Continued Availability of Expired Appropriation for Additional Project Phases, B-286929 (2001)

- **PERSCOM entered agreement with GSA's FEDSIM for phase 1 of a 3 phase project.**
- **Obligated \$17.5 million of FY 1997 Funds.**
- **Phase 1 completed; cost only \$8 million.**
- **After FY 1997, PERSCOM wanted to obligate the remaining \$9.5 million for phases 2 & 3.**

Intragovernmental Acquisitions

- **1 Oct 03**
**>100,000, transmit info to
IGA electronic commerce
portal**

∇ ≈ Oct 01

page 7-7

No legal review

Reprogramming

Chapter 11

FY03 Omnibus Appropriations

- “Prior Congressional Approval” Thresholds:

- Procurement – \$10M to \$20M

- RDT&E – \$4M to \$1

page 11-6

Non-Appropriated Funds

Chapter 13

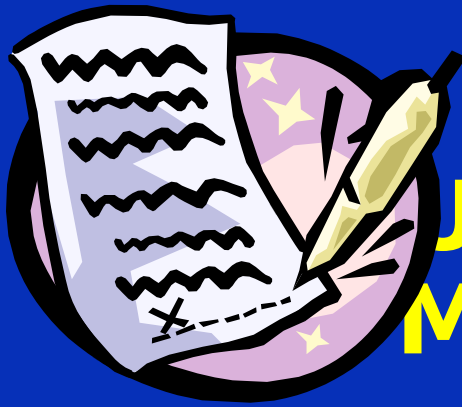
Army 10 - Miler

page 13-21



**DoD did not
Approve
Request to use
Appropriated
Funds**

**NAF Funds are
available**



Uniform Funding and Management of MWR Programs

- § 323 of the FY 03 Authorization Act added 10 U.S.C. § 2494
- Authorized DOD to augment NAF funds with AP funds
- Only authorized for MWR programs authorized appropriated funds
- DOD Regulation

Not in Outline

Judgment Fund

Chapter 14

Judgment Fund

- **31 U.S.C. § 1304**

- If money to pay judgment is unavailable, tap into Judgment Fund (interest + Congress)

- **Reimbursement:**

- Contract Disputes Act

- NoFEAR Act

page 14-4, 14-10

Liability of Accountable Officials

Chapter 16

Liability of Accountable Officials

Department of Defense, Authority to
Impose Pecuniary Liability by
Regulation, B-280764 (2000)

- Vol. 5, Ch. 33, para. 330505 (August 1998)
- DOD certifying officers designate "accountable officials" who would be pecuniarily liable for erroneous payments resulting from the negligent performance of their duties.

page 16-2



§ 1005 of the FY03 Authorization Act (116 Stat. 2631)

10 U.S.C. § 2773a:

Joint & several liability

Departmental

accountable official =

person who provides
information or data to a

certifying official

relied upon

payment

Not in outline

CERP: Commander's Emergency Response Program

Initially, "CERP" was Iraqi Funded
CJTF-7 Fragmentary Order 89, 19 June
03

SUBJECT: Commander's Emergency Response Program (CERP)

CERP was a CPA funded authority
provided for reconstruction
assistance.

Funding source was seized Iraqi
assets

CERP: '04 Wartime Supplemental

SEC. 1110.

- During the current FY,
- from DoD O & M funds
- not to exceed \$180,000,000 may be used,
- **notwithstanding any other provision of law,**
- to fund the CERP, established by the CPA Administrator for the purpose of enabling military CDRS in Iraq

CERP: Wartime Supplemental

SEC. 1110 (Cont'd)

- to respond to urgent humanitarian relief and reconstruction requirements within their AORs
- by carrying out programs that will immediately assist the Iraqi people,
- and to establish and fund a similar program to assist the people of Afghanistan:
- Provided, That the SecDef provide notice after obligation and provide quarterly reports, . . .

CERP: Commander's Emergency Response Program

Purpose: Reconstruction Assistance

**Education; Health Care; Electricity;
Water; Security**

**“Grassroots effort by local CDRs to quickly
deal with short-term needs.”**

“Low cost, high impact”

**Few Rules; Less Red tape/little
bureaucracy**

CERP: Commander's Emergency Response Program

Thresholds

Division Commanders - \$500,000
with an individual project limit of
\$100,000

Brigade Commanders - \$200,000
with an individual project limit of
\$50,000

The Government Purchase Card

Not in outline

Proposed DFARS Rule (67 Fed Reg 77955, Dec. 20, 2002)

- Mandatory training
- Prohibits “splitting” requirements
- Prohibits issuance to contractors

Not in outline

Clinger Cohen Act *(40 U.S.C. § 14129e)*

- 1996
- Government-wide IT
- Congress – OMB – GSA
 - **FEDCAC**
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(31 U.S.C. § 501 note)

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